

EXHIBIT 1

5:21-cv-844 (XR)

4/27/2022

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Jonathan Sherman White 6 (21 - 24)

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1 A. I think I'm reserving -- reserving the absolute
 2 "I have all knowledge of all charging decisions since
 3 2018." I think that's -- I'm trying to exclude and not
 4 give you an inaccurate answer there, but I should have
 5 fairly good knowledge since 2018.

6 Q. How familiar are you with the facts relevant to
 7 the ongoing election related prosecutions that the
 8 Attorney General's Office is involved in?

9 A. I would say I'm pretty familiar with those
 10 facts. I'm not, you know, lead counsel on each one of
 11 those cases, so I -- and since they're pending, I
 12 wouldn't be able to speak about the facts of those
 13 ongoing cases other than what's been made public, but I
 14 should have pretty good knowledge.

15 Q. Do you have personal knowledge of the charging
 16 decision -- charging decisions made in the cases against
 17 those defendants?

18 A. I -- I should have personal knowledge of those
 19 charging decisions, yes.

20 Q. So moving forward, I may ask you questions
 21 about specific cases, prosecutions. If there is
 22 anything you don't know or are unfamiliar with, it would
 23 be helpful if you -- if you pointed that out when we
 24 talked about it. Is that -- does that sound okay?

25 A. Sure.

1 Q. In your position at the Attorney General's
 2 Office, do you represent the Texas State Legislature or
 3 any individual Texas legislators?

4 A. Only to the extent that I would be asked to
 5 provide guidance to them regarding a specific issue.

6 Q. Have you ever -- in your position at the
 7 Attorney General's Office, do you represent the Texas
 8 Secretary of State's Office?

9 A. I personally do not, but the agency, I believe,
 10 does.

11 Q. So you mentioned that you are sometimes called
 12 to give advice to the Texas State Legislature or certain
 13 individual legislators.

14 To your knowledge, have individual Texas
 15 legislators ever communicated with you in confidence for
 16 the purpose of obtaining legal advice?

17 A. Yes.

18 Q. Do you know whether legislators subsequently
 19 discuss that advice publicly?

20 A. I do not.

21 Q. Mr. White, are you familiar with Senate Bill 1?

22 A. I'm familiar with Senate Bill 1.

23 Q. Were you at all involved in the legislature's
 24 process of drafting Senate Bill 1 or any of its
 25 predecessor bills?

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1 A. I was involved to some degree with, primarily,
 2 I believe some of the predecessor bills.

3 Q. In what way were you involved with the drafting
 4 of the predecessor bills of Senate Bill 1?

5 A. In -- in being requested to provide guidance
 6 regarding portions of those bills.

7 Q. Which portions of the predecessor bills were
 8 you asked to provide guidance on?

9 MR. HUDSON: Object to the extent that it
 10 calls for attorney-client privilege, attorney
 11 work-product, or legislative privileged information. To
 12 the extent that you can respond without encroaching on
 13 any of those privileges, you're free to do so,
 14 otherwise, I'm going to instruct you not to answer.

15 A. I don't know that I can answer that.

16 Q. Have you been asked -- or were you -- excuse
 17 me, were you asked to testify during any hearings on
 18 Senate Bill 1 or any of its predecessor bills?

19 A. I was called as a resource witness on some of
 20 those hearings on the predecessor bills, and on SB 1, I
 21 believe, actually, as well.

22 Q. How many times were you asked to provide
 23 testimony on Senate Bill 1 or its predecessor bills?

24 A. As an estimate, I would say I was probably
 25 asked to provide testimony or appear as a resource

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1 witness maybe 10 times. And I probably actually
 2 testified maybe half of that.

3 Q. When you testified for -- excuse me --
 4 withdrawn.

5 When you were called to testify, what were
 6 you asked to testify about?

7 MR. HUDSON: I'm going to object to the
 8 extent that that would encroach on attorney-client or
 9 attorney work-product or legislative privilege. To the
 10 extent that you can answer, you can do so. Otherwise,
 11 I'll instruct you not to answer.

12 And just for clarification of the record,
 13 is your question directed at what he was asked to
 14 testify about in public, or are you asking if there was
 15 a specific ask made by legislators? Because that would
 16 help me instruct him so that he can actually answer your
 17 question.

18 MS. PAIKOWSKY: Of course.

19 Q. (By Ms. Paikowsky) I think for the moment we
 20 can limit it to what you were asked to testify in a
 21 public forum.

22 A. Wow. I -- I don't think I could even begin to
 23 cover all the questions that I was asked publicly. But
 24 generally it pertained to criminal provisions within the
 25 bills.

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1 against the voter's wishes.	Page 73	Page 75
2 Q. And what makes you come to that conclusion?	1	situations where voters were -- voters may have been approached and pressured into receiving assistance outside of a polling place or even with regards to mail ballots, and we did not have an adequate statute to address that interaction at that time. However, I do believe there was a -- possibly an amendment made to Chapter 64.036 that helped in that area, possibly with SB 5 in the special session of the 85th Legislature that helped in that regard, so these may have been older cases.
3 A. She was charged with violations under both 4 64.036, unlawful assistance, and 64.012, illegal voting, 5 which would involve marking the voter's ballot without 6 their direction or against their wishes.	2	7 Q. So was that in 2017?
7 Q. But you don't have specific knowledge of the 8 underlying facts of that case?	3	8 A. Uh-huh. Yes, ma'am.
9 A. I do have some knowledge, but I would have to 10 refer -- refresh my recollection.	4	9 Q. And of all of the cases that you have pointed 14 out to me today, which of these, if any, to your 15 knowledge took place in person at a polling place?
11 MR. HUDSON: Would you guys be okay with a 12 five-minute comfort break?	5	16 A. The case that certainly didn't involve mail 17 ballots, and it was the violation of Chapter 61.008, 18 would have happened at a polling place for sure, and 19 I -- I don't recall specifically any others. I'm not 20 saying there weren't any, but I don't recall 21 specifically any others that happened at a polling place 22 that I can tell just based on these notes and without 23 refreshing my recollection.
13 MS. PAIKOWSKY: Yeah, of course.	6	24 Q. Sorry. One moment.
(Brief recess.)	7	25 MS. PERALES: And just so I'm not lost,
15 Q. (By Ms. Paikowsky) Okay. So I believe we left 16 off with Cynthia K. Gonzales on Page 9.	Page 74	Page 76
17 A. Uh-huh.	1	1 you're talking about Patricia Barton in Medina County on 2 Page 7?
18 Q. Are there any other cases on this page, again	2	3 THE WITNESS: That's the one that jumps 4 out to memory, yes, ma'am.
19 where you have personal knowledge today of the 20 underlying operative facts comprising the elements of 21 the charges in cases that have resolved favorably for an 22 assister who was providing otherwise lawful assistance 23 attempting to influence or coerce the voter they were 24 assisting?	5	5 Q. (By Ms. Paikowsky) So based on your knowledge 6 today, other than that one case, none of those cases 7 listed in the exhibit took place in person at a polling 8 place?
25 A. That appears to be it for Page 9.	9	9 A. I'm not recalling any from my memory, so I 10 would agree to that, to avoid having to look through 11 each one of them again, but that's my recollection.
1 Q. Okay.	12	12 Q. And the Patricia Barton case, that one you 13 noted did not involve assistance?
2 A. And mercifully, that appears to be it for the 3 rest of the resolved prosecutions.	14	14 A. I don't believe it did involve assistance, no.
4 Q. Thank you. So in all of the cases we 5 discussed, was your office able to secure convictions, 6 pleas, or otherwise favorably resolve the matter for all 7 of the -- the cases we've discussed?	15	15 Q. And all of the cases that we discussed involved 16 violations of existing statutes that predated SB 1?
8 A. Yes. We would have -- the disposition in those 9 cases would have either been conviction, deferred 10 adjudication, or a diversion program which would have 11 come with a stipulation to the allegations, to the 12 offense.	17	17 A. Correct, which are still in place today.
13 Q. Before Senate Bill 1, to your knowledge was the 14 Office of the Attorney General ever unable to prosecute 15 a defendant who you had determined beyond a reasonable 16 doubt had coerced or influenced a voter while providing 17 otherwise lawful in-person assistance?	18	18 Q. They're still in place today. Thank you.
18 A. With the -- with the understanding that our 19 resolved investigations and prosecutions are not subject 20 to a privilege that I'm aware of, we still have 21 confidentiality in terms of public release of 22 information resolving cases that didn't result in a 23 conviction or deferred adjudication, so I just want to 24 have that caveat.	19	19 Just one minute. Okay. So I'm going to 20 move on to the mail -- the mail ballot identification 21 provisions of Senate Bill 1. So first of all, do you 22 believe that all eligible voters who want to participate 23 in an election should be able to cast a ballot and have 24 their ballot counted?
25 I do recall generally that we had	20	20 A. Yes.

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1 or have the voter fill out their own identification 2 number?	Page 89	1 A. This specific version, I'm not 100 percent 2 sure, but -- I couldn't say for sure. 3 Q. What are instances where you presented some 4 version of this slide show?
3 A. That's right. Absolutely. 4 MS. PAIKOWSKY: If it's okay, can I take a 5 five-minute break?		5 A. The one I recall is -- would be the Secretary 6 of State's annual elections conference for elections 7 administrators. 8 Q. And in that conference, who are you presenting 9 this slide show to?
6 A. Sure. 7 MR. HUDSON: No objection. 8 (Lunch recess.)		10 A. Elections officials. 11 Q. What is the purpose of giving this presentation 12 to election officials?
9 Q. (By Ms. Paikowsky) Mr. White, I'm going to go 10 back to asking questions about SB1's mail ballot 11 identification provisions. Without SB1's mail ballot 12 identification provisions, would your office have other 13 means of detecting vote harvesting?		13 A. To inform them about election integrity efforts 14 and enforcement and to give them some information on 15 what they can look for in terms of detecting election 16 fraud and how to report it. 17 Q. If you wouldn't mind turning to Bates 18 No. 054641.
14 MR. HUDSON: Object to the extent that 15 that would encroach on investigator privilege, and 16 remind you of the stipulation concerning the running 17 objection. Just instruct the witness, to the extent 18 that that would encroach on methods of investigation or 19 practices, I'll instruct you not to answer.		19 A. Okay. 20 Q. Can you describe this slide?
21 A. Yeah. Without going into our mental 22 impressions and our investigative practices, I guess I 23 could say we have prosecuted vote harvesting cases in the past.		21 A. So this slide is intended to show some examples 22 or representations of examples of mail ballot 23 application activity that might be associated with -- 24 with fraud or vote harvesting operations. 25 Q. Does this slide show tools that your office
25 information about any investigation, but do you have -- 1 does your office have methods by which you would detect 2 potential illegal vote harvesting?	Page 90	1 uses to detect vote harvesting and impersonations? 2 A. The intent was to show elections administrators 3 items that they might detect, and if looking -- if 4 looked into further might find evidence of fraud that 5 they would report to our office. 6 Q. So is it fair to say that the examples you see 7 here might give your office or others cause to 8 investigate potential absentee ballot by mail fraud?
3 MR. HUDSON: Same objections. 4 A. We have -- 5 MR. HUDSON: Same instruction. 6 A. We have other methods. 7 Q. All right. I'm going to show you a document 8 that we can mark Exhibit 5.		9 A. They might if we received a complaint with this 10 type of information inside of it. 11 Q. Have there been instances -- again, not going 12 into privileged information about any specific 13 investigation -- have there been instances in the past 14 where your office has received a complaint that includes 15 an example that you -- similar to those that you've 16 provided here to detect a vote harvesting?
8 (Exhibit 5 marked.) 9 MS. PERALES: What are you marking? You 10 tell me. This is 5? 11 MS. PAIKOWSKY: This is 5.		17 A. Yes. 18 Q. To your knowledge, will your office continue to 19 rely on this tool to detect vote harvesting?
12 Q. (By Ms. Paikowsky) Do you recognize this 13 document? Sorry, and I should say this is marked 14 State -- Bates No. State 05462. 15 A. Yes, I believe I do. 16 Q. And what is this document?		20 A. We'll continue to rely on complaints that have 21 credible information about election fraud. 22 Q. And the kinds of evidence that you might 23 consider credible evidence warranting an investigation 24 would be -- would include what's provided on this slide 25 show?
17 A. It is a PowerPoint file including some 18 information about election integrity at the Attorney 19 General's Office. 20 Q. Who created this PowerPoint? 21 A. I guess a collaboration involving myself and 22 some other members of our team, I'm not sure exactly 23 who. 24 Q. What has the slide show been used for?		

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1 unlawful voter assistance when that individual was not
 2 working for a political campaign?

3 **A. And by "unlawful assistance," you mean a
 4 violation of 64.036.**

5 Q. Or the other measures that we have discussed
 6 before, 64.012, 276.013.

7 **A. I'm not sure. I'm not sure on those specific
 8 statutes. But what I could tell you is that almost all
 9 of the cases that we see that involve assistance fraud
 10 involve individuals that we believed were associated
 11 with campaigns or working directly for a candidate or a
 12 slate of candidates, or were relatives of candidates or
 13 the candidates themselves.**

14 Q. Thank you. And so sitting here today, you
 15 cannot recall an instance in which your office has
 16 brought charges against an individual for violating
 17 either 64.036 or 64.012, or 276.013, when that defendant
 18 was not working for a candidate or campaign or slate of
 19 candidates, correct?

20 **A. Or a relative of the candidate or the candidate
 21 themselves?**

22 Q. Right.

23 **A. If you include those -- if you can give me one
 24 moment. I can --**

25 MR. HUDSON: For purposes of the record, I

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1 to advise him on what he can and can't talk about. If
 2 we can go off the record just a moment.

3 (Brief recess.)
 4 MR. HUDSON: Mr. White, so I understand,
 5 the case that you're referring to is on Exhibit --

6 THE WITNESS: 6.

7 MR. HUDSON: Exhibit 6. I'm instructing
 8 you -- to the extent that there's anything in the public
 9 record about the case, I'm instructing you to testify
 10 about that. To the extent that there are details that
 11 are part of ongoing investigative processes,
 12 attorney-client privilege, attorney work product, or any
 13 other applicable privileges, I'm instructing you not to
 14 answer. But to the extent it's on the public record,
 15 I'm instructing you to answer.

16 **A. The case --**

17 MR. HUDSON: Let her ask her question.

18 **A. Go ahead.**

19 Q. (By Ms. Perales) I think we were out there,
 20 the question was half answered. But I'll go ahead and
 21 make a new question for you.

22 MR. HUDSON: Sorry about that.

23 THE WITNESS: Sure.

24 Q. Please describe for me the charges that you
 25 mentioned a few minutes ago related to a particular

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 1 would point out that you were referencing -- would you
 2 identify that by exhibit number?

3 THE WITNESS: That's Exhibit 6, which is
 4 the list of our pending -- includes a list of our
 5 pending prosecutions.

6 **A. I can think of -- I could think of one --**

7 Q. Where you brought charges?

8 **A. -- case where charges have been brought. There
 9 could be more, but I don't have a recollection of them
 10 at this time.**

11 Q. Tell me about that one case.

12 **A. I can't go into that case due to --**

13 Q. If charges have been brought, wouldn't that be
 14 a public record?

15 **A. There's a pending prosecution.**

16 Q. I see. Are there charging documents?

17 **A. There are.**

18 Q. Have they been filed?

19 **A. They have.**

20 Q. Where have they been filed?

21 **A. In the district court where the case is
 22 charged.**

23 Q. What is that district court? If it's a public
 24 record, I'm entitled to know about it.

25 MR. HUDSON: If I could have just a minute

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1 defendant and the scenario that I was describing.
 2 **A. Okay. The case that came to mind does not
 3 actually involve ballot assistance, it involved voter
 4 registration, and so it may not be directly applicable
 5 to your -- your question, and I think it may not. It --
 6 what sparked my memory is that it did involve an offense
 7 under 276.013, but it was not under the influencing the
 8 voter subsection, so I don't think that it would be
 9 responsive, but I have been instructed that, if it were
 10 responsive, I would disclose to you --**

11 MR. HUDSON: Well, don't tell her what I
 12 instructed you.

13 THE WITNESS: I'm sorry. I'm sorry.

14 MR. HUDSON: That's on the record.

15 **A. But if something is in the public record, I
 16 would make that available to you.**

17 Q. Yes. So is there a reference to that on the
 18 Exhibit 6 somewhere?

19 **A. The case is one of our pending -- one of our
 20 pending prosecutions.**

21 Q. And since charges have been filed, can you
 22 point to me which page that pending prosecution is on in
 23 the exhibit?

24 **A. It's -- well, it's -- again, it's not
 25 responsive to the -- to the subject area that we were**